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Sent: Tuesday, January 23, 2007 4:22 PM
To: fgc@fgc.ca.gov; MLPAComments@resources.ca.gov
Subject: MLPAComments: Comments on Regulations

Dear DFG Commissioners and Staff,

It has been my privilege to serve as an alternate representative of the recreational diving community on the Central Coast Regional Stakeholder Group, and to speak on behalf of non-consumptive citizens of California throughout the MLPA process. I am hugely gratified that this process is nearing completion on the Central Coast, and appreciate the work of the Commission and all the state employees who have worked to devise an effective network of MPAs for the Central Coast. While many of the environmental goals of the legislation were compromised more than I expected in order to reduce fishing impacts, I am eager to achieve and measure the benefits these carefully drawn areas will provide. **Congratulations on this work** will soon be deservedly received by all involved.

The goals of the MLPA legislation were elaborated by the Regional Stakeholder Group and include:
Goal 3: To improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to minimal human disturbances, and to manage these uses in a manner consistent with protecting biodiversity.

1. Ensure some MPAs are close to population centers and research and education institutions and include areas of traditional non-consumptive recreational use and are accessible for recreational, educational, and study opportunities.

...

4. Protect or enhance recreational experience by ensuring natural size and age structure of marine populations.

While an argument can be made that the preferred alternative will meet **these** objectives, Central Coast divers feel **it falls short of improving our recreational experience**. Even when the "Preferred Alternative" is adopted,

- * Divers at the Monterey Breakwater may still suffer the hazard of hooking by anglers,
- * The natural size and age structure of fish populations along the entire Monterey and PG shorelines is badly depleted and will not be restored at Cannery Row, the top diving area in the region, unless dramatic curbs on fishing are instituted there,
- * The aesthetic, recreational, and ecological value of Ricketts and PG SMCAs, and
- * The natural size and age structure of fish populations in the Ricketts, PG, and Carmel Bay SMCAs may continue to be compromised and depleted by contests to take the largest and most unusual fish there.

Only with safeguards against these degradations of our experience will we consider the true promise of MLPA to have been met.

As a representative of the recreational diving community in the Central Coast RSG process, I am writing to express concerns over the draft regulations for the Edward F. Ricketts SMCA in south Monterey Bay, the Pacific Grove Marine Gardens State Marine Conservation Area, and the Carmel Bay SMCA [Section 632(b)(35)]. Specifically, we have concerns about (1) proposed recreational fishing restrictions in the Ricketts SMCA, (2) kelp harvesting in the Ricketts and PG SMCAs, and (3) fishing **contests** in all three SMCAs.

The Monterey Breakwater is the most popular and heavily-used recreational SCUBA diving site on the west coast of North America, and the remainder of the Ricketts SMCA is also heavily dived. The entire Ricketts SMCA is within view of Cannery Row, and has tremendous recreational value for both divers and non-divers. Tourists from shore or in kayaks marvel at herons and egrets walking on the kelp mats, and take delight in sea otters, harbor seals and sea lions cavorting in the kelp beds. The Pacific Grove shore is second only to the Cannery Row area in use and appreciation by divers, and the marine resources along that shore are cherished by local residents. The Carmel Bay SMCA includes the best and most accessible beach-diving locations in the area, and are third in popularity after Monterey and PG.

Recreational Fishing from the Monterey Breakwater

The draft regulations offer five alternatives for regulating recreational fishing in the Ricketts SMCA. The Commission has heard public testimony about the tremendous popularity of the Breakwater dive site, how the Breakwater boasts tremendous fish species diversity, how many divers have been hooked by fishers, and how timed-increment photographs of the Breakwater on weekends indicate that divers outnumber fishers by ratios of about forty-to-one on Saturdays and twenty-to-one on Sundays. Based on that testimony, the Commission decided to restrict recreational fishing off the Breakwater.

We believe that an option "3(a)" should be added: **no recreational fishing within the entire Ricketts SMCA, except 6pm Sunday to 6pm Friday, and except fishing any time from the Monterey Breakwater by disabled persons.** This would give the Commission the flexibility to accommodate **both** of the stakeholder groups who have expressed the greatest interest and appreciation for the fish in this area. This is the same as option 3, but adds an exemption for disabled persons.

As a diver representative, of the five alternatives *currently drafted*, we support option 2(a), prohibiting fishing off the Breakwater from 6pm Friday to 6pm Sunday. Option 2(a) allows fishing by disabled fishermen at any time off the Breakwater. We do not support option 1 (recreational fishing allowed at all times), since it was rejected by the majority of the Commissioners in their August 2006 meeting. We do not support options 4 or 5 that allow recreational fishing off the Breakwater after 6am on Sunday, because the Breakwater is heavily dived on Sunday. For instance, at the end of their weekend-long certification training, freshly certified divers usually make their first independent dive along the breakwater wall on Sunday. Such novice divers are most vulnerable to panic, lung injury or drowning if accidentally hooked by a fisher.

Virtually all divers are keenly aware, and almost universally supportive of the fourteen year long effort to designate the Edward F. Ricketts area a State Marine Reserve, with no consumptive take allowed. We are also aware of diver and community interest in strong conservation of resources along the Pacific Grove shoreline. We remain disappointed that the Ricketts area has instead been designated a State Marine Conservation Area. If any consumptive take is allowed in this area, it should be carefully regulated to preserve and enhance the value to non-consumptive users. Relatively small changes in regulatory policy will mean large effects for the tens of thousands of divers who dive there, and the dozens of related businesses that earn roughly \$100 million there each year.

Kelp Harvesting Regulations in Monterey and Pacific Grove

The draft kelp harvesting regulations for the Ricketts SMCA state: "Any licensed commercial kelp harvester may take no more than 12 tons of kelp... in any calendar month." We believe the regulations as drafted are in error, and do not reflect the intent of the commission, for two reasons: (a) the limit is

per harvester, and does not limit the total kelp take in the reserve, and (b) the harvest limit per harvester is much greater than the current total harvesting rate.

The value of regulating kelp harvest in the two SMCAs is to preserve the kelp forest along the Monterey-Pacific Grove shore, and the integrity of the associated assemblage of marine life which relies on it for habitat. This preserves not only ecological integrity, but their value for all non-consumptive purposes. At the same time, the regulations are intended to allow the continued exploitation of kelp for the benefit of the existing businesses engaged in the mariculture of abalone.

Life forms living in the stretch of kelp forest within the two SMCAs range from hydroids to snails to sea otters. Based on their appreciation by all non-consumptive users, living marine resources in their natural environment are probably worth more here than anywhere else in California. Kelp cutters pay the state just \$1.70 per ton for the privilege of converting this habitat to abalone feed. While it is generally acknowledged that recent and current practices of those now engaged in this business in the Monterey area are sustainable, there are no guarantees about future ownership, future practices, and no allocation of the kelp within these SMCAs to the existing mariculturists. Any licensed kelp harvester may take kelp from these SMCAs.

By their own records, the abalone-farming companies in Monterey report they harvest only small quantities of kelp from the Cannery Row and Lover's Point areas. They estimated it comprised just over 15% of their use during the months of November through March and far less during other months. The total November through March take averages less than two and a half tons of kelp per month (based on records from 2001-2004, Art Seavey, pers. comm., March 2005). The maximum take was 4.08 tons per month. We further note that these businesses formed the "Monterey Kelp Collective" and have, for a decade, successfully convinced the Monterey Bay National Marine Sanctuary to base its kelp policy on the existence of a single entity (the Collective) which effectively shares kelp taken from this area among all those with a need to use the resource. There is currently no competition for the kelp in this area among kelp harvesters, and thus no need for a per-harvester allocation system. Should that change in the future, we would support allocating 100% of the permissible kelp take in these SMCAs to the abalone mariculturists *currently operating* in Monterey.

Harvest rate limits are important because even small-scale hand harvesting can have a visible impact on the extent of the kelp beds, and because many animals depend on the upper kelp canopy as their primary habitat. For instance, several species of juvenile rockfish inhabit the kelp canopy, including juvenile Black & Yellow, Kelp, Gopher, Redbanded, Flag, Treefish and Splitnose rockfish species, with juvenile Black, Bocaccio and Olive rockfish species feeding in the canopy (Tom Laidig, NOAA biologist, July 2006 presentation: "Juvenile Rockfish of California").

On this basis, **we recommend that an aggregate monthly limit be set on the kelp harvest within the Ricketts SMCA and the PG Marine Gardens SMCA.** Even accounting for business growth, we can find no justification for a November to March monthly limit on total quantity allowable to all harvesters in aggregate, to be much greater than the historical maximum of 4.08 tons from Monterey to Lovers' Point (Art Seavey, pers. comm., March 2005). Similarly, we also have records that not more than 19 tons of kelp per month from November to March was taken from Lovers' Point to Point Pinos. If the only area outside Cannery Row where these businesses could obtain kelp were the PG Marine Gardens SMCA (which is clearly not the case) an upper limit of 20 tons during this season would be adequate.

A seasonally adjusted maximum is called for here, because the kelp canopy fluctuates wildly. From Dec 30, 2006 to the date of this writing (Jan 23, 2007) we have observed that there has been no kelp at all visible on the surface along most or all of Cannery Row, and much of PG. This is a result of violent seas

that scoured the area on Dec 27. We cannot expect kelp to reappear until mid-spring. At this time, the take of even one to two tons would be a clear-cut.

We therefore recommend that the language be revised as follows for the Ricketts SMCA: 1st sentence unchanged (restricts kelp harvesting to the north portion of Ricketts SMCA). Revise 2nd sentence as follows "The total monthly harvest by all licensed commercial kelp harvesters combined shall not exceed five (5) tons of kelp from the portion of Administrative Kelp Bed 220 within the Edward F. Ricketts State Marine Conservation Area in November, December, January, February and March, and shall not exceed twelve (12) tons of kelp in other months."

We also note that the regulatory language for the Pacific Grove SMCA suffers from the same shortcoming. **The monthly limit should be for all kelp harvesters combined, not per harvester**, and should be set at 20 tons total per month in November through March. The April-October limit might reasonably be a bit higher and we are still researching a reasonable quantity for this. Thus the regulations should read: "The total monthly harvest by all licensed commercial kelp harvesters combined shall not exceed 20 (twenty) tons of kelp from the portion of Administrative Kelp Bed 220 within the Pacific Grove Marine Gardens State Marine Conservation Area in in November, December, January, February and March, and shall not exceed XX [amount TBD] tons of kelp in other months."

Fishing Contests in SMCA's

The marine protected areas which will be established to the north and south of the Monterey Peninsula are at locations hugely appreciated for their non-consumptive recreational value. While some of those will allow sport fishing, we believe that it is inappropriate to hold fishing contests in those areas. Competing to take the most fish out of areas where people go to *see* fish is simply **not sharing nicely with others. A ban on fishing contests or competitions should be applied to the Pacific Grove Marine Gardens State Marine Conservation Area and the Carmel Bay State Marine Conservation Area.** Such a ban for spearfishing contests is incorporated into the Edward F. Ricketts State Marine Conservation Area "automatically" as all spearfishing is prohibited there. The impact of these contests, especially of spearfishing tournaments, is substantial. When a *spearfishing* contest is conducted, the largest fish living to depths of 60 feet are targeted by accomplished free divers who typically scout the area of the contest for weeks in advance. They return to shoot *identified large individual fish*, thus depleting the largest and most productive groundfish in the area for some years to come. In addition, some contests award points for each different species taken. It can reasonably be said that these contests are perfectly designed to produce the maximum depletion of biodiversity and reproductive capacity of shallow fin fish where they take place. In these three SMCAs, there is tremendous non-consumptive value placed on the opportunity to observe and photograph large and unusual fish. This value is held by literally thousands of divers as well as local residents. Permitting a few dozen devotees of a sport practiced by few in this area to degrade the experience of thousands is neither fair policy nor sound economics.

My thanks go to all commissioners and staff who have devoted their time to read these comments and consider them.

Sincerely Yours,

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Marc Shargel,
Sea Life Photographer
Chair, The Coalition of Organizations for Ocean Life

Former Alternate Member, MLPA Central Coast Regional Stakeholder Group

"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has." --Margaret Mead

For more information on the creation of marine reserves along the Central Coast, see: <http://www.CaliforniaMarineReserves.org>